



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

FILE:

Office: Texas Service Center

Date:

OCT 3 2000

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[REDACTED]

DISCUSSION: The application was denied by the Director, Texas Service Center, who certified his decision to the Associate Commissioner, Examinations, for review. The director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The director determined that the applicant failed to submit additional evidence as had been requested. The director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, counsel asserts that the applicant did comply with the director's request for evidence. He submits copies of evidence previously furnished by the applicant.

Because the applicant's medical examination report (Form I-693) reflects that tuberculosis test was not done, he was advised on April 1, 1997, that everyone over the age of two is required to have a tuberculosis test. He was, therefore, requested to submit a new medical examination report on Form I-693 that includes a test for tuberculosis. In response, the applicant submits another Form I-693 dated April 8, 1997 which, again, did not show the results of a tuberculosis test. While it is noted that the applicant submitted evidence that he was given a chest x-ray and that the result was normal, this x-ray was obtained on August 11, 1995, approximately 2 years prior to the medical examination.

In a notice of intent to deny the application dated May 7, 1997, the director determined that although the applicant submitted an evaluation from the Health Department as a supplement to the Form I-693, this was not requested. He added that neither [REDACTED] Hospital [REDACTED] nor Hispanic Medical Center are on the list of Service qualified medical examiners. The applicant was, therefore, requested to submit a new medical examination report on Form I-693; the tests results are to be recorded on the form; and the examination must be performed by a Service authorized physician.

On appeal, counsel submits copies of evidence previously furnished and addressed by the director. The record, however, reflects that the applicant failed to submit the required documents.

Pursuant to section 291 of the Act, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. He has failed to meet that burden. Therefore, the decision of the director to deny the application will be affirmed.

ORDER: The director's decision is affirmed.